

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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E. Mishan & Sons, Inc.,	:	Civil Action No. 1:19-cv-6999 (PGG)
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
Promier Products Inc. and	:	
Big Lots Stores, Inc.,	:	
	:	
Defendants.	:	
-----X		

1 CONSENT JUDGMENT

THIS CAUSE coming on to be heard on the stipulation of the parties, the parties having agreed upon a settlement of their differences including the entry of this Consent Judgment.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. This court has jurisdiction over the subject matter of this action and the parties to this action.
2. The parties agree that "ASOTV Logo" means (a) the words "As Seen on TV" in any font and/or logo, or (b) any similar phrase or logo that suggests a product has been advertised on television.
3. Promier Products Inc. ("Promier") and its officers, directors, owners, agents, shareholders, employees, attorneys, representatives, partners, parents, subsidiaries, affiliates, successors, assigns and all persons acting in concert or participation with any of them who receive actual notice of this Consent Judgment, are hereby enjoined from using the "ASOTV Logo" on any product, or on any package, label, or in advertising (including print, point of sale, or online) for a product, except as provided in the Criteria For Use of the ASOTV Logo By Promier ("Criteria For Use") set forth in paragraph 7 below.

4. Big Lots Stores Inc. ("Big Lots") and its officers, directors, owners, agents, employees, attorneys, representatives, partners, parents, subsidiaries, affiliates, successors, assigns, and all persons acting in concert or participation with any of them who receive actual notice of this Consent Judgment, are hereby enjoined from utilizing the ASOTV Logo on or in connection with the (i) sale, offer to sell, or distribution of any product supplied by Premier, or (ii) advertising (including print, point of sale, online or store signage) of any product supplied by Premier, unless Big Lots has received written verification from Premier that it has satisfied the Criteria For Use for such product(s) as recited in paragraph 7. For the avoidance of doubt, the restrictions of this section *do not apply* to Big Lots for a product bearing the ASOTV Logo that is not supplied to Big Lots directly or indirectly from Premier.

5. Upon receipt by Emson of the Settlement Payment and subject to all other terms of the Settlement Agreement entered into by the Parties (a) Premier may sell through its existing Inventory of Accused Products (as both terms are defined in the Settlement Agreement) by December 31, 2020, and (b) Big Lots may sell any remaining inventory of Accused Products.


6. Premier warrants that it has removed the TacLight Video referred to in the Complaint (¶¶ 39-40) from its website and from any other location controlled by Premier in which it is stored and represents it will not use the Video in the future.


7. Criteria For Use of the ASOTV Logo By Premier: After entry of this Consent Judgment, Premier's use of an ASOTV Logo shall be limited to products for which: the specific product has been advertised in an infomercial on national cable and/or broadcast television in a commercially significant amount in terms of both advertising dollars spent and the number of airings of the infomercial. For purposes herein, an "infomercial" shall mean a video advertisement of 30 seconds or longer seeking a direct response from consumers to buy the product directly from the company by

toll-free phone number or website; and “national cable and/or broadcast television” shall not include website videos, including those stored solely on such sites as YouTube and Instagram or Premier’s own website, even if viewable using a television set, smartphone, or other screen device.

8. The parties consent and hereby submit to the continued jurisdiction of this Court for purposes of interpretation and enforcement of this Consent Judgment.

9. The parties hereby waive any right to appeal from entry of judgment and each party shall bear its own costs and attorneys’ fees.


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MEMO ENDORSED

The Clerk of the Court is directed to close the case.
SO ORDERED:

Dated: May 19, 2020


Paul G. Gardephe,
U.S.D.J.